

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VOITH PAPER GMBH & CO. KG	:	
	:	Civil Action No. 07-226-JJF
Plaintiff,	:	
	:	
v.	:	
	:	
JOHNSONFOILS, INC.	:	
	:	
Defendant.	:	

DEFENDANT'S COMBINED MOTION TO (I) SHORTEN THE
OPPOSITION PERIOD FOR DEFENDANT'S MOTION TO STRIKE
THE DECLARATION OF MICHAEL H. WALLER AND (II) SET
EXPEDITED HEARING ON DEFENDANT'S MOTION TO STRIKE
WITH L.R. 7.1.1 CERTIFICATION

Defendant, JohnsonFoils, Inc. ("JohnsonFoils") hereby moves this Honorable Court to shorten the period for opposition to Defendant's Motion to Strike the Declaration of Michael H. Waller ("Motion to Strike") and for an expedited hearing on the Motion to Strike. In support hereof, JohnsonFoils respectfully shows the Court the following:

1. Local Rule of Practice and Civil Procedure 7.1.2(b) of the United States District Court for the District of Delaware requires that "Unless otherwise ordered, once a motion has been deemed served, the response thereto shall be filed within 10 days, as calculated consistent with Fed. R. Civ. P. 6(a) and (e) and CM/ECF Procedures."

2. On August 3, 2007, this Court issued a Scheduling Order in the present case ordering the parties to attend a Markman hearing scheduled for

January 30, 2008 and to file their respective Markman Briefs ten days prior to the scheduled Markman hearing.

3. On January 16, 2008 Plaintiff, Voith Paper GmbH Co. KG ("Voith") filed its Markman Brief accompanied by the declaration of an expert witness Michael J. Waller ("Waller") in support of thereof ("Declaration").

4. Prior to January 16, 2008, Voith gave JohnsonFoils no notice of its intent file the Declaration or present the testimony of Waller as an expert witness at the Markman hearing.

5. On January 24, 2008 JohnsonFoils filed its Motion to Strike.

6. In order to put JohnsonFoils on notice of whether Waller will be permitted to testify at the January 30, 2008 Markman Hearing, it is imperative that JohnsonFoils obtain a ruling on its Motion to Strike as soon as possible.

7. If Voith is permitted the full 10 days to reply to JohnsonFoils' Motion to Strike as computed under Fed. R. Civ. P 6(a) and (e), the time period for reply will not expire until February 7, 2008, which is after the Court's scheduled date for the Markman Hearing.

8. In order to give this Court adequate time to order on JohnsonFoils' Motion to Strike and to give JohnsonFoils adequate notice before the scheduled January 30, 2008 Markman Hearing on whether Waller's testimony will be admitted, it is imperative that this Honorable Court shorten the period for reply to JohnsonFoils' Motion to Strike such that the last day for reply is Monday, January 28, 2008 at 4:00 p.m.

9. On December 15, 2006, this Court issued a Standing Order setting dates and times for hearing motions and ordering that all motions be accompanied by a request to have the motion heard on one of the days set by the court. The next date and time available for motion hearing, as set by the Court, following the filing of Defendant's motions is February 8, 2008, which is after the Court's scheduled January 30, 2008 Markman Hearing.

10. In order to put JohnsonFoils on notice of whether Waller's testimony will be admitted at the Markman Hearing, it is imperative that this Honorable Court expedite hearing the Motion to Strike.

11. Local Rule 7.1.1 Certification. In compliance with Local Rule of Practice and Civil Procedure 7.1.1 of the United States District Court for the District of Delaware, JohnsonFoils has made a reasonable effort to reach agreement with Voith on the matters set forth in this motion, but the parties have been unable to reach an agreement.

WHEREFORE, based upon the foregoing, JohnsonFoils respectfully requests that this Honorable Court enter an order shortening the period for opposition to its Motion to Strike and schedule an expedited hearing on the Motion to Strike. A proposed form of Order is attached.

Respectfully submitted,

Seitz, Van Ogtrop & Green, P.A.

/s/ Patricia P. McGonigle

Date: January 24, 2008

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-and-

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*Attorneys for Defendant
JohnsonFoils, Inc.*

CERTIFICATE OF SERVICE

I, Patricia P. McGonigle, Esquire, hereby certify that on this 24th day of January 2008, I electronically filed the foregoing pleading with the Clerk of Court using CM/ECF which will send notification of such filing to counsel of record. Further, I caused a copy of the foregoing pleading to be served upon the following counsel as noted

Via Hand Delivery

Adam W. Poff, Esquire
Young, Conaway, Stargatt & Taylor, LLP
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Wilmington, DE 19899

Via Federal Express

Neil F. Greenblum, Esquire
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/s/ *Patricia P. McGonigle*

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v.	:	
	:	
JOHNSONFOILS, INC.	:	
	:	
Defendant.	:	

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendant, JohnsonFoils, Inc. ("JohnsonFoils"), will present its "Combined Motion to (I) Shorten the Opposition Period for Defendant's Motion to Strike Declaration of Michael H. Waller and (II) Set Expedited Hearing on Defendant's Motion to Strike" to the Court at a time that is convenient to the Court.

PLEASE TAKE FURTHER NOTICE that Defendant is seeking an expedited hearing on this motion.

Seitz, Van Ogtrop & Green, P.A.

Date: January 24, 2008

/s/ Patricia P. McGonigle

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**ORDER GRANTING DEFENDANT'S COMBINED MOTION TO (I) SHORTEN
THE OPPOSITION PERIOD FOR DEFENDANT'S MOTION TO STRIKE THE
DECLARATION OF MICHAEL H. WALLER AND (II) SET EXPEDITED
HEARING ON DEFENDANT'S MOTION TO STRIKE**

Upon consideration of *Defendant's Combined Motion to (I) Shorten the Opposition Period for Defendant's Motion to Strike the Declaration of Michael H. Waller and (II) Set Expedited Hearing on Defendant's Motion to Strike* (the "Motion") and for good cause, it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that any opposition to the Motion to Strike the Declaration of Michael H. Waller ("Motion to Strike") shall be filed and served on or before _____, 2008 at _____.m.; and it is further

ORDERED that a hearing on the Motion to Strike shall be held on _____, 2008 at _____.m.

Dated: January ___, 2008

U.S.D.J.